



# **Australian Communications and Media Authority Act 2005**

**No. 44, 2005**

**An Act to establish the Australian Communications  
and Media Authority, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# **Australian Communications and Media Authority Act 2005**

**No. 44, 2005**

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**An Act to establish the Australian Communications  
and Media Authority, and for related purposes**

*[Assented to 1 April 2005]*

The Parliament of Australia enacts:

Section 1

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## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Australian Communications and Media Authority Act 2005*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	1 April 2005
2. Sections 3 to 68	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence before 1 July 2005, they commence on that day.	1 July 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Definitions

In this Act, unless the contrary intention appears:

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**ACMA** means the Australian Communications and Media Authority.

**ACMA staff** means the staff described in section 54.

**additional functions**, in relation to the ACMA, has the meaning given by section 11.

**appointer** means:

- (a) for a member—the Governor-General; or
- (b) for an associate member—the Minister.

**associate member** means an associate member of the ACMA.

**broadcasting, content and datacasting functions**, in relation to the ACMA, has the meaning given by section 10.

**carriage service provider** has the same meaning as in the *Telecommunications Act 1997*.

**carrier** has the same meaning as in the *Telecommunications Act 1997*.

**Chair** means the Chair of the ACMA.

**contract** includes a deed.

**Deputy Chair** means the Deputy Chair of the ACMA.

**Division** means a Division as described in section 46.

**ends**, in relation to a hearing, inquiry or investigation, has the meaning given by section 4.

**hearing** means a hearing held, or proposed to be held, by the ACMA under Part 13 of the *Broadcasting Services Act 1992*.

**inquiry** means an inquiry held, or proposed to be held, by the ACMA under:

- (a) Part 25 of the *Telecommunications Act 1997*; or
- (b) Part 5.2 of the *Radiocommunications Act 1992*.

**investigation** means an investigation conducted, or proposed to be conducted, by the ACMA under:

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- (a) Part 26 of the *Telecommunications Act 1997*; or
- (b) Part 11 or 13 of the *Broadcasting Services Act 1992*; or
- (c) Part 4 of Schedule 5, or Part 5 of Schedule 6, to the *Broadcasting Services Act 1992*.

**listed carriage service** has the same meaning as in the *Telecommunications Act 1997*.

**member** means a member of the ACMA, and does not include an associate member.

**radiocommunications** means:

- (a) radiocommunications (within the meaning of the *Radiocommunications Act 1992*); or
- (b) a transmission or radio emission covered by subsection 20(1) or section 21 or 22 of that Act.

**radiocommunications community** includes:

- (a) users of radiocommunications; and
- (b) persons who sell, hire, manufacture or import:
  - (i) radiocommunications transmitters (within the meaning of the *Radiocommunications Act 1992*); or
  - (ii) radiocommunications receivers (within the meaning of that Act).

**spectrum management functions**, in relation to the ACMA, has the meaning given by section 9.

**telecommunications** means the carriage of communications (as defined in the in the *Telecommunications Act 1997*) by means of guided and/or unguided electromagnetic energy.

**telecommunications functions**, in relation to the ACMA, has the meaning given by section 8.

**vacancy**, in relation to the office of a member, has a meaning affected by section 5.

**4 When does an inquiry, investigation or hearing end?**

- (1) This section defines when an inquiry, investigation or hearing *ends* for the purposes of this Act.
- (2) An investigation under Part 26 of the *Telecommunications Act 1997*, or an inquiry or hearing, ends at the end of the day on which the ACMA completes the preparation of a report about the investigation, inquiry or hearing under whichever of the following provisions is applicable:
  - (a) section 495 or 516 of the *Telecommunications Act 1997*;
  - (b) section 261D of the *Radiocommunications Act 1992*;
  - (c) section 199 of the *Broadcasting Services Act 1992*.
- (3) An investigation under Part 11 of the *Broadcasting Services Act 1992* ends at the end of the day the ACMA notifies the complainant of the results of the investigation under whichever of subsections 149(3) or 152(3) of that Act is applicable.
- (4) An investigation under Part 13 of the *Broadcasting Services Act 1992* ends:
  - (a) if the ACMA decides to prepare a report about the investigation under section 178 of that Act—at the end of the day the ACMA completes the report; or
  - (b) otherwise—at the end of the day the ACMA completes the investigation.
- (5) An investigation under clause 26 of Schedule 5, or clause 38 of Schedule 6, to the *Broadcasting Services Act 1992* ends at the end of the day the ACMA notifies the complainant of the results of the investigation under that clause.
- (6) An investigation under clause 27 of Schedule 5 to the *Broadcasting Services Act 1992* ends at the end of the day the ACMA completes the investigation.

**5 When is there a vacancy?**

For the purposes of a reference in:

- (a) this Act to a vacancy in the office of a member; or

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(b) the *Acts Interpretation Act 1901* to a vacancy in the membership of a body;  
there are taken to be 7 offices of members in addition to the Chair and Deputy Chair.

## **Part 2—ACMA's establishment, functions, powers and liabilities**

### **Division 1—Establishment**

#### **6 Establishment**

The Australian Communications and Media Authority is established by this section.

## Division 2—Functions

### 7 ACMA's functions

The ACMA has the functions described in this Division.

### 8 ACMA's telecommunications functions

- (1) The ACMA's *telecommunications functions* are as follows:
- (a) to regulate telecommunications in accordance with the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
  - (b) to advise and assist the telecommunications industry;
  - (c) to report to and advise the Minister in relation to the telecommunications industry;
  - (d) to report to and advise the Minister in relation to matters affecting consumers, or proposed consumers, of carriage services;
  - (e) to manage Australia's input into the setting of international standards for telecommunications (except so far as Standards Australia International Limited is responsible for managing that input);
  - (f) to monitor, and report to the Minister on, all significant matters relating to the licensing of carriers under the *Telecommunications Act 1997*;
  - (g) to make available to the public information about matters relating to the telecommunications industry;
  - (h) to conduct public educational programs about matters relating to the telecommunications industry;
  - (i) to give advice to the public about matters relating to the telecommunications industry;
  - (j) such other functions as are conferred on the ACMA by or under:
    - (i) the *Spam Act 2003*; or
    - (ii) the *Telecommunications Act 1997*; or

- (iii) the *Telecommunications (Carrier Licence Charges) Act 1997*; or
  - (iv) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (other than subsection 158F(1)); or
  - (v) the *Telecommunications (Numbering Charges) Act 1997*; or
  - (vi) Part XIC of the *Trade Practices Act 1974*;
  - (k) to monitor, and to report to the Minister on, the operation of each Act specified in paragraph (j), to the extent it is so specified;
  - (l) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) An expression used in this section that is also used in the *Telecommunications Act 1997* has the same meaning in this section as it has in that Act.

## **9 ACMA's spectrum management functions**

The ACMA's *spectrum management functions* are as follows:

- (a) to manage the radiofrequency spectrum in accordance with the *Radiocommunications Act 1992*;
- (b) to advise and assist the radiocommunications community;
- (c) to report to and advise the Minister in relation to the radiocommunications community;
- (d) to manage Australia's input into the setting of international standards for radiocommunications (except so far as Standards Australia International Limited is responsible for managing that input);
- (e) to make available to the public information about matters relating to the radiocommunications community;
- (f) to conduct public educational programs about matters relating to the radiocommunications community;
- (g) to give advice to the public about matters relating to the radiocommunications community;
- (h) such other functions as are conferred on the ACMA by or under:

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- (i) the *Radiocommunications Act 1992* (other than a provision of that Act covered by paragraph 10(1)(p)); or
  - (ii) the *Radiocommunications (Receiver Licence Tax) Act 1983*; or
  - (iii) the *Radiocommunications (Spectrum Licence Tax) Act 1997*; or
  - (iv) the *Radiocommunications Taxes Collection Act 1983*; or
  - (v) the *Radiocommunications (Transmitter Licence Tax) Act 1983*;
- (i) to monitor, and to report to the Minister on, the operation of each Act specified in paragraph (h), to the extent it is so specified;
  - (j) to do anything incidental to or conducive to the performance of any of the above functions.

**10 ACMA's broadcasting, content and datacasting functions**

- (1) The ACMA's ***broadcasting, content and datacasting functions*** are as follows:
  - (a) to regulate broadcasting services, Internet content and datacasting services in accordance with the *Broadcasting Services Act 1992*;
  - (b) to plan the availability of segments of the broadcasting services bands on an area basis;
  - (c) to allocate, renew, suspend and cancel licences and to take other enforcement action under the *Broadcasting Services Act 1992*;
  - (d) to conduct investigations or hearings relating to the allocating of licences for community radio and community television services;
  - (e) to conduct investigations as directed by the Minister under section 171 of the *Broadcasting Services Act 1992*;
  - (f) to design and administer price-based systems for the allocation of commercial television broadcasting licences and commercial radio broadcasting licences;
  - (g) to collect any fees payable in respect of licences;
  - (h) to conduct or commission research into community attitudes on issues relating to programs and datacasting content;



- (i) to assist broadcasting service providers and datacasting service providers to develop codes of practice that, as far as possible, are in accordance with community standards;
- (j) to monitor compliance with those codes of practice;
- (k) to develop program standards relating to broadcasting in Australia;
- (l) to monitor compliance with those standards;
- (m) to monitor and investigate complaints concerning broadcasting services (including national broadcasting services) and datacasting services;
- (n) to inform itself and advise the Minister on technological advances and service trends in the broadcasting industry, Internet industry and datacasting industry;
- (o) such other functions as are conferred on the ACMA by or under:
  - (i) the *Australian Broadcasting Corporation Act 1983*; or
  - (ii) the *Broadcasting Services Act 1992*; or
  - (iii) the *Interactive Gambling Act 2001*; or
  - (iv) the *Radio Licence Fees Act 1964*; or
  - (v) the *Special Broadcasting Service Act 1991*; or
  - (vi) subsection 158F(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;  
or
  - (vii) the *Television Licence Fees Act 1964*;
- (p) such other functions as are conferred on the ACMA by or under the following provisions of the *Radiocommunications Act 1992*:
  - (i) paragraph 102B(b), 109A(1)(g) or (ga), or 131ACA(b);
  - (ii) subsection 106(6A), 109A(1A) or (1B), 114(3C) or (3E), or 128C(1);
  - (iii) section 128D;
- (q) to report to, and advise, the Minister in relation to the broadcasting industry, Internet industry and datacasting industry;
- (r) to monitor, and to report to the Minister on, the operation of each Act specified in paragraph (o) or (p), to the extent it is so specified;

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- (s) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) An expression used in this section that is also used in the *Broadcasting Services Act 1992* has the same meaning in this section as it has in that Act.

**11 ACMA's additional functions**

- (1) The ACMA's *additional functions* are as follows:
  - (a) if a written instruction issued by the Minister to do so is in force—to prepare to provide for the management of electronic addressing:
    - (i) of a kind specified in the instruction; and
    - (ii) relating to a kind of listed carriage service specified in the instruction;
  - (b) if an instruction under paragraph (a) and a written instruction issued by the Minister to do so are in force—to provide for the management of electronic addressing:
    - (i) of a kind specified in the instruction under this paragraph and covered by the instruction under paragraph (a); and
    - (ii) relating to a kind of listed carriage service specified in the instruction under this paragraph and covered by the instruction under paragraph (a);
  - (c) to provide services, or facilities, on behalf of the Commonwealth under a contract made by the Commonwealth, where:
    - (i) the services or facilities relate to radiocommunications or telecommunications; or
    - (ii) the provision of the services or facilities utilises the ACMA's spare capacity; or
    - (iii) the provision of the services or facilities maintains or improves the specialised technical skills of the ACMA's staff in relation to radiocommunications or telecommunications;
  - (d) such functions as are conferred on the ACMA by or under:
    - (i) this Act (other than section 8, 9 or 10); or

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- (ii) any other law (other than a law to the extent to which it confers functions described in section 8, 9 or 10);
  - (e) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) Paragraph (1)(c) does not authorise the ACMA to perform a function if the performance of the function would impede the ACMA's capacity to perform its other functions.

## Division 3—Powers and liabilities

### 12 ACMA's powers

- (1) The ACMA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions, other than the power:
  - (a) to acquire, hold and dispose of real and personal property; or
  - (b) to enter into contracts; or
  - (c) to lease the whole or any part of any land or building for the purposes of the ACMA.

Note: For the power to enter into contracts etc. on behalf of the Commonwealth for the benefit of the ACMA, see section 44 of the *Financial Management and Accountability Act 1997* as it applies in relation to the ACMA as an Agency.

- (2) A right to sue is taken not to be personal property for the purposes of paragraph (1)(a).

### 13 ACMA's financial liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the ACMA are taken to be liabilities of the Commonwealth.
- (2) For the purposes of this section:

*financial liability* means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

## **Division 4—Requirements relating to these functions and powers**

### **14 Minister may give directions to ACMA**

- (1) The Minister may give written directions to the ACMA in relation to the performance of its functions and the exercise of its powers.
- (2) However, such a direction can only be of a general nature if it relates to:
  - (a) the ACMA's broadcasting, content and datacasting functions;  
or
  - (b) the ACMA's powers relating to those functions.
- (3) A direction under subsection (1) must be published in the *Gazette*.
- (4) The ACMA must perform its functions, and exercise its powers, in a manner consistent with any directions given by the Minister under subsection (1).
- (5) This section does not affect the Minister's powers under the *Broadcasting Services Act 1992* to give directions to the ACMA.

### **15 ACMA not otherwise subject to direction**

Except as otherwise provided by or under this or any other Act, the ACMA is not subject to direction by or on behalf of the Commonwealth.

### **16 Consistency with CER Trade in Services Protocol**

The ACMA must perform its broadcasting, content and datacasting functions, and exercise its powers relating to those functions, in a manner consistent with Australia's obligations under the CER Trade in Services Protocol (as defined in the *Broadcasting Services Act 1992*).

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**17 ACMA to consult ACCC in relation to management of electronic addressing**

The ACMA must consult the Australian Competition and Consumer Commission before carrying out an act:

- (a) for the purpose of performing its functions under paragraph 11(1)(a) or (b); and
- (b) that would, in the ACMA's opinion, have a significant effect on competition or consumer protection.

## **Part 3—ACMA's constitution and membership**

### **Division 1—Constitution**

#### **18 ACMA's constitution**

- (1) The ACMA:
  - (a) is a body corporate with perpetual succession; and
  - (b) must have a seal; and
  - (c) may sue and be sued in its corporate name.
- (2) The seal of the ACMA is to be kept in such custody as the ACMA directs and must not be used except as authorised by the ACMA.
- (3) All courts, judges and persons acting judicially must:
  - (a) take judicial notice of the imprint of the seal of the ACMA appearing on a document; and
  - (b) presume that the document was duly sealed.

## **Division 2—Membership**

### **Subdivision A—Members**

#### **19 Membership**

The ACMA consists of the following members:

- (a) a Chair;
- (b) a Deputy Chair;
- (c) at least 1, and not more than 7, other members.

#### **20 Appointment of members**

- (1) Each member is to be appointed by the Governor-General by written instrument.
- (2) The Chair and the Deputy Chair must be appointed as full-time members.
- (3) A member, other than the Chair or the Deputy Chair, may be appointed as a full-time member or as a part-time member.
- (4) A part-time member may be assigned by the Minister, acting on the ACMA's advice, on a full-time basis to an inquiry, investigation or hearing. Such an assignment must be in writing.
- (5) For the purposes of this Act (except for subsection 31(2) and paragraph 34(5)(b)), a part-time member so assigned is taken to be a full-time member while the assignment is in force.

#### **21 Period of appointment for members**

*Period of current appointment*

- (1) A member holds office for the period specified in his or her instrument of appointment. The period must not exceed 5 years.



*Total appointments must not exceed 10 years*

- (2) A person can be appointed as a member more than once. However, a later appointment must not result in the sum of the person's periods of appointment exceeding 10 years.

*Extension to complete inquiry, investigation or hearing*

- (3) Despite subsections (1) and (2), if a member is conducting, or is part of the panel conducting, an inquiry, investigation or hearing for the ACMA, the Minister may, by writing, extend the member's appointment until the end of the inquiry, investigation or hearing.

*For 10 year rule, count associate membership and ABA and ACA membership and associate membership*

- (4) For the purposes of subsection (2), a **period of appointment** includes (in addition to any periods when the person was a member of the ACMA):
- (a) a period when the person was an associate member of the ACMA; or
  - (b) a period before the commencement of section 6 when the person was a member, or associate member, of the Australian Broadcasting Authority that was established by the *Broadcasting Services Act 1992*; or
  - (c) a period:
    - (i) starting on or after 1 July 1997; and
    - (ii) ending before the commencement of section 6;when the person was a member, or associate member, of the body corporate that was continued in existence by section 14 of the *Australian Communications Authority Act 1997*.

## **22 Acting Chair**

- (1) The Deputy Chair is to act as the Chair:
- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair:
    - (i) is absent from duty or from Australia; or

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- (ii) is, for any reason, unable to perform the duties of the office.
- (2) While the Deputy Chair is acting as the Chair:
  - (a) the Deputy Chair has, and may exercise, all the Chair's powers, and must perform all the Chair's functions and duties; and
  - (b) this Act, and all other Acts, apply to the Deputy Chair as if he or she were the Chair.
- (3) Anything done by or in relation to the Deputy Chair when purporting to act under this section is not invalid merely because the occasion to act had not arisen or had ceased.

**23 Acting appointments—members other than the Chair**

- (1) The Minister may appoint a member to act as the Deputy Chair:
  - (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Deputy Chair:
    - (i) is acting as the Chair; or
    - (ii) is absent from duty or from Australia; or
    - (iii) is, for any reason, unable to perform the duties of the office.
- (2) The Minister may appoint a person to act as a member (other than as Chair or Deputy Chair):
  - (a) during a vacancy in the office of a member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when a member:
    - (i) is acting as the Deputy Chair; or
    - (ii) is absent from duty or from Australia; or
    - (iii) is, for any reason, unable to perform the duties of the office.
- (3) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

### **Subdivision B—Associate members**

#### **24 Appointment of associate members**

- (1) The Minister may appoint as many associate members of the ACMA as he or she thinks fit.
- (2) Each associate member is to be appointed by the Minister by written instrument.
- (3) An associate member may be appointed as a full-time associate member or as a part-time associate member.
- (4) An associate member's instrument of appointment must contain a statement to the effect that the associate member's appointment relates to 1 or more specified matters, being:
  - (a) an inquiry, investigation or hearing; or
  - (b) any other matter that relates to the performance of the ACMA's functions or the exercise of the ACMA's powers.

#### **25 Period of appointment for associate members**

##### *Default period*

- (1) An associate member holds office for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

##### *Total periods of appointment must not exceed 10 years*

- (2) A person can be appointed as an associate member more than once. However, a later appointment must not result in the sum of the person's periods of appointment exceeding 10 years.

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*Reduction if specified inquiry, investigation or hearing ends earlier*

- (3) Despite subsection (1), if:
- (a) an associate member's instrument of appointment specifies that the appointment relates to a specified inquiry, investigation or hearing; and
  - (b) the inquiry, investigation or hearing ends before the end of the period described in subsection (1);
- the associate member holds office until the end of the inquiry, investigation or hearing.

*Extension to complete inquiry, investigation or hearing*

- (4) Despite subsections (1) and (2), if an associate member is conducting, or is part of the panel conducting, an inquiry, investigation or hearing for the ACMA, the Minister may, by writing, extend the associate member's appointment until the end of the inquiry, investigation or hearing.

*For 10 year rule, count membership and ABA and ACA membership and associate membership*

- (5) For the purposes of subsection (2), a ***period of appointment*** includes (in addition to any periods when the person was an associate member of the ACMA):
- (a) a period when the person was a member of the ACMA; or
  - (b) a period before the commencement of section 6 when the person was a member, or associate member, of the Australian Broadcasting Authority that was established by the *Broadcasting Services Act 1992*; or
  - (c) a period:
    - (i) starting on or after 1 July 1997; and
    - (ii) ending before the commencement of section 6;when the person was a member, or associate member, of the body corporate that was continued in existence by section 14 of the *Australian Communications Authority Act 1997*.

## **26 Acting appointments—associate members**

- (1) The Minister may appoint a person to act as an associate member during any period, or during all periods, when an associate member:
  - (a) is acting as a member; or
  - (b) is absent from duty or from Australia; or
  - (c) is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## **27 Associate members to be treated as members for certain purposes in other Acts**

- (1) For the purposes of a reference in an Act other than this Act to a member of the ACMA, an associate member is taken to be a member for all purposes in connection with any inquiry, investigation, hearing or other matter specified in his or her instrument of appointment.
- (2) Subsection (1) is subject to a contrary intention in the other Act.

### **Division 3—Terms and conditions for members and associate members**

#### **28 Remuneration**

- (1) A member or associate member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member or associate member is to be paid the remuneration that is prescribed in the regulations.
- (2) A member or associate member is to be paid the allowances that are prescribed in the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **29 Standing obligation to disclose interests**

- (1) A member or associate member (the *discloser*) must disclose any interest he or she has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (2) Subsection (1) applies to interests:
  - (a) whether direct or indirect, and whether or not pecuniary; and
  - (b) whether acquired before or after the discloser's appointment.
- (3) The disclosure must be by notice in writing given to the Minister, and to each of the members, as soon as practicable after the discloser becomes aware of the potential for conflict of interest.

#### **30 Obligation to disclose interests before deciding a particular matter**

- (1) A member or associate member (the *discloser*) who has an interest that could conflict with the proper performance of the functions of his or her office, as they give him or her a role in deciding a

particular matter, must not perform the role in deciding the matter unless:

- (a) he or she has disclosed that interest to each of the members; and
  - (b) each of the members has consented to the discloser performing that role in deciding that matter despite the possible conflict of interest.
- (2) Subsection (1) applies to interests:
    - (a) whether direct or indirect, and whether or not pecuniary; and
    - (b) whether acquired before or after the discloser's appointment.
  - (3) A member, other than the Chair, who gives a consent under paragraph (1)(b) must, as soon as practicable, advise the Chair that he or she has given the consent.
  - (4) If an interest is disclosed under subsection (1), the Chair must, as soon as practicable, give the Minister a written notice:
    - (a) describing the interest and the matter; and
    - (b) advising the Minister whether the members have consented as mentioned in paragraph (1)(b).

### **31 Outside employment**

- (1) The Chair must not engage in paid employment outside the duties of the Chair's office without the Minister's approval.
- (2) The other full-time members and the full-time associate members must not engage in paid employment outside the duties of their offices without the Chair's approval.

### **32 Leave of absence**

- (1) A full-time member or full-time associate member has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Chair leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

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- (3) The Chair may grant another full-time member or a full-time associate member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chair determines.
- (4) The Chair may grant leave of absence to any part-time member, or part-time associate member, on the terms and conditions that the Chair determines.

**33 Resignation**

A member or associate member may resign his or her appointment by giving the appointer a written resignation.

**34 Termination of appointment**

- (1) The appointer must terminate the appointment of a member or associate member if the Minister is of the opinion that the performance of the member or associate member has been unsatisfactory for a significant period of time.
- (2) The Governor-General must terminate the appointment of all of the members and associate members if the Minister is of the opinion that the ACMA's performance has been unsatisfactory for a significant period of time.
- (3) The appointer may terminate the appointment of a member or associate member for misbehaviour or physical or mental incapacity.
- (4) The appointer may terminate the appointment of a member or associate member if:
  - (a) the member or associate member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or



- (b) the member or associate member fails, without reasonable excuse, to comply with section 29 or 30.
- (5) The appointer may terminate the appointment of a full-time member or full-time associate member if:
  - (a) the member or associate member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 consecutive months; or
  - (b) the member or associate member engages, without the approval required by section 31, in paid employment outside the duties of his or her office.
- (6) The appointer may terminate the appointment of a part-time member if the member is absent, except on leave of absence, from 3 consecutive meetings of the ACMA.
- (7) The appointer may terminate the appointment of a part-time associate member if the associate member is absent from 3 consecutive meetings of the ACMA except on leave of absence. However, the only meetings that are to be taken into account for this purpose are meetings:
  - (a) that the associate member was entitled to attend (see section 40); and
  - (b) about which reasonable efforts were made to inform the associate member (see paragraph 37(b)).
- (8) If the Minister is of the opinion that the members have failed to comply with section 56 or 57, the Governor-General may terminate the appointment of all members or particular members.

### **35 Other terms and conditions**

A member or associate member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the appointer.

## **Part 4—Decision-making and delegation by ACMA**

### **Division 1—Meetings**

#### **36 Times and places of meetings**

- (1) The ACMA is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at such times and places as the ACMA decides. This subsection has effect subject to subsections (3) and (4).
- (3) The Chair may call a meeting at any time.
- (4) The Chair must call a meeting if requested to do so in writing by:
  - (a) the Minister; or
  - (b) at least 2 other members.

#### **37 Notice of meetings**

Reasonable efforts must be made to inform the following people about proposed meetings of the ACMA:

- (a) the members;
- (b) if the agenda for the proposed meeting mentions a matter connected with an inquiry, investigation, hearing or other matter specified in 1 or more associate members' instruments of appointment—that associate member, or each of those associate members.

#### **38 Presiding at meetings**

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the Deputy Chair presides.
- (3) If neither the Chair nor the Deputy Chair is present at a meeting, the members present must appoint 1 of themselves to preside.

### **39 Quorum**

- (1) At a meeting of the ACMA, a quorum is constituted by a majority of the members.
- (2) However, if:
  - (a) section 30 prevents a member from participating in the deliberations, or decisions, of the ACMA with respect to a particular matter; and
  - (b) when the member leaves the meeting concerned there is no longer a quorum present;the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

### **40 Participation etc. by associate members at meetings**

- (1) An associate member is entitled to attend, and participate in discussions at, a meeting of the ACMA while the meeting is considering a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment.
- (2) Subsection (1) has effect subject to section 30.

### **41 Voting at meetings etc.**

- (1) At a meeting of the ACMA, a question is decided by a majority of the votes of the following people present and voting:
  - (a) the members; and
  - (b) if the question relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the instruments of appointment of 1 or more associate members—that associate member, or each of those associate members.
- (2) The person presiding at a meeting has a deliberative vote and, if necessary, also a casting vote.

**Part 4** Decision-making and delegation by ACMA

**Division 1** Meetings

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**42 Conduct of meetings**

The ACMA may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

**43 Minutes**

The ACMA must keep minutes of its meetings.

## **Division 2—Decisions without meetings**

### **44 Decisions without meetings**

- (1) A decision is taken to have been made at a meeting of the ACMA if:
  - (a) without meeting, a majority of the members indicate agreement with the proposed decision in accordance with the method determined by the ACMA under subsection (2); and
  - (b) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the ACMA:
  - (a) has determined that it applies; and
  - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) Paragraph (1)(a) does not apply to a member who is prevented by section 30 from deliberating on the proposed decision.
- (4) For the purposes of a particular proposed decision, this section applies to an associate member as if the associate member were a member, if that proposed decision relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment.

### **45 Record of decisions**

The ACMA must keep a record of decisions made in accordance with section 44.

## Division 3—Divisions

### 46 Divisions

- (1) The ACMA may establish 1 or more Divisions. If the ACMA establishes a Division, the ACMA must:
  - (a) determine the kinds of matters the Division can deal with; and
  - (b) ensure such a determination is in force at all times while the Division continues to exist.

Note: A Division cannot perform any of the ACMA's functions, or exercise any of the ACMA's powers, other than those delegated to the Division under section 50.

- (2) The ACMA may:
  - (a) dissolve a Division; or
  - (b) revoke, vary or substitute a determination under subsection (1).
- (3) A Division must consist of at least 3 members as chosen from time to time by the ACMA. If the Chair is not chosen, the Chair may elect at any time to be in the Division.
- (4) A Division can also include 1 or more associate members as chosen from time to time by the ACMA if, for that associate member, or for each of those associate members, the kinds of matters the Division can deal with include a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment.
- (5) A member or associate member can be in more than 1 Division.
- (6) Subject to the Chair's right of election under subsection (3), the ACMA may remove a member or associate member from a Division.
- (7) A Division can decide a matter:
  - (a) at a meeting of the Division (see section 47); or
  - (b) in accordance with section 48.

**47 Meetings of a Division**

- (1) Subject to subsection (2), the following provisions apply in relation to meetings of a Division:
- (a) a member in the Division may call a meeting by giving notice of the meeting to the other members in the Division;
  - (b) a quorum at a meeting is a majority of the members for the time being in the Division;
  - (c) if:
    - (i) section 30 prevents a member in the Division from participating in the deliberations, or decisions, of the Division with respect to a particular matter; and
    - (ii) when the member leaves the meeting concerned there is no longer a quorum present;the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter;
  - (d) the members present at a meeting must appoint 1 of themselves to preside at the meeting;
  - (e) a question at a meeting is decided by a majority of the following people in the Division present and voting:
    - (i) the members in the Division; and
    - (ii) if the question relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the instruments of appointment of 1 or more associate members in the Division—that associate member, or each of those associate members;
  - (f) the person presiding at a meeting has a deliberative vote and, if necessary, also a casting vote.
- (2) Subject to subsection (3), a Division may determine its own rules relating to meetings, including (for example) rules about the following:
- (a) calling of meetings;
  - (b) notice of meetings;
  - (c) presiding at meetings;
  - (d) how decisions are made at meetings, including quorum requirements and voting entitlements and procedures.

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The rules that the Division determines displace the rules that would otherwise apply under subsection (1), to the extent of any inconsistency.

- (3) A Division cannot:
- (a) determine rules that purport to exclude the operation of, or that are inconsistent with, section 30, or any other provision of this Act (other than subsection (1) of this section); or
  - (b) determine rules under which an associate member would be allowed to vote on a question that does not relate to a matter connected with an inquiry, investigation, hearing or other matter specified in the instrument of appointment of the associate member.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

**48 Division can make decisions without meetings**

- (1) A decision is taken to have been made at a meeting of a Division if:
- (a) without meeting, a majority of the members in the Division indicate agreement with the proposed decision in accordance with the method determined by the Division under subsection (2); and
  - (b) all the members in the Division were informed of the proposed decision, or reasonable efforts were made to inform all those members of the proposed decision.
- (2) Subsection (1) applies only if the Division:
- (a) has determined that it applies; and
  - (b) has determined the method by which the members in the Division are to indicate agreement with proposed decisions.
- (3) Paragraph (1)(a) does not apply to a member who is prevented by section 30 from deliberating on the proposed decision.
- (4) For the purposes of a particular proposed decision, this section applies to an associate member in the Division as if the associate member were a member in the Division, if that proposed decision relates to a matter connected with an inquiry, investigation, hearing



or other matter specified in the associate member's instrument of appointment.

**49 Minutes etc.**

A Division must:

- (a) keep minutes of its meetings; and
- (b) keep a record of decisions made in accordance with section 48.

## Division 4—Delegations

### 50 Delegations by ACMA to a Division

- (1) The ACMA may, by writing, delegate to a Division any or all of the ACMA's functions and powers so far as they relate to the kinds of matters the Division can deal with.
- (2) A certificate:
  - (a) stating any matter with respect to the performance of a delegated function or exercise of a delegated power; and
  - (b) signed by:
    - (i) a member in the Division; or
    - (ii) an associate member who participated, or could have participated, in the making of the Division's decision to perform the delegated function or exercise the delegated power;is prima facie evidence of the matter.
- (3) A document purporting to be a certificate mentioned in subsection (2) is taken to be such a certificate and to have been duly given unless the contrary is established.

### 51 Delegations by ACMA to others

Subject to section 53, the ACMA may, by writing, delegate any or all of its functions and powers to:

- (a) a member; or
- (b) an associate member, if the delegated function or power relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment; or
- (c) a member of the ACMA staff; or
- (d) a person whose services are made available to the ACMA under subsection 55(1).

**52 Delegations by a Division**

- (1) Subject to section 53, a Division may delegate all or any of the functions and powers delegated to it under section 50 to:
  - (a) a member; or
  - (b) an associate member, if the delegated function or power relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment; or
  - (c) a member of the ACMA staff; or
  - (d) a person whose services are made available to the ACMA under subsection 55(1).
- (2) The delegation continues in force despite a change in the membership of the Division.
- (3) The delegation may be varied or revoked by the Division (whether or not there has been a change in the membership of the Division).
- (4) A certificate:
  - (a) stating any matter with respect to a delegation under subsection (1); and
  - (b) signed by:
    - (i) a member in the Division; or
    - (ii) an associate member who participated, or could have participated, in the making of the Division's decision to make the delegation;is prima facie evidence of the matter.
- (5) A document purporting to be a certificate mentioned in subsection (4) is taken to be such a certificate and to have been duly given unless the contrary is established.
- (6) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a delegation under this section in the same way as they apply to the delegation under section 50 to the Division.

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**53 Limit on powers delegable to persons other than Divisions**

- (1) Sections 51 and 52 do not apply to a power to make, vary or revoke an instrument that is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (2) Sections 51 and 52 do not apply to a power to do any of the following under the *Broadcasting Services Act 1992*:
  - (a) cancel or suspend licences;
  - (b) decide that a person is not suitable to be allocated or to continue to hold a licence;
  - (c) impose, vary or revoke a condition on a licence (other than a timing condition on a temporary community broadcasting licence);
  - (d) determine, vary or revoke a program standard;
  - (e) determine or vary priorities under section 24 of that Act;
  - (f) prepare or vary frequency allotment plans under section 25 of that Act;
  - (g) prepare or vary licence area plans under section 26 of that Act;
  - (h) give an opinion under section 21 or 74 of that Act;
  - (i) approve or refuse to approve temporary breaches under section 67 of that Act;
  - (j) make, vary or revoke a determination under section 103L of that Act;
  - (k) issue, or extend the time for compliance with, a notice (other than a notice under Schedule 5 to that Act);
  - (l) refer a matter to the Director of Public Prosecutions;
  - (m) initiate a hearing;
  - (n) formulate, vary or revoke a scheme under clause 51 of Schedule 5 to that Act;
  - (o) determine, vary or revoke an industry standard under Schedule 5 to that Act;
  - (p) determine, vary or revoke an online provider determination under Schedule 5 to that Act;
  - (q) make or vary a digital channel plan under a scheme in force under clause 6 of Schedule 4 to that Act;

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- (r) make or vary a digital channel plan under a scheme in force under clause 19 of Schedule 4 to that Act.
- (3) Subsection (2) does not limit the generality of subsection (1).

## Part 5—ACMA's staff etc.

### 54 Staff

- (1) The staff of the ACMA are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Chair and the ACMA staff together constitute a Statutory Agency; and
  - (b) the Chair is the Head of that Statutory Agency.

### 55 Arrangements with authorities of the Commonwealth

- (1) The ACMA may make an arrangement with an authority of the Commonwealth:
  - (a) for the services of officers or employees of the authority to be made available for the purposes of the ACMA; or
  - (b) for the services of the ACMA staff to be made available for the purposes of the authority.
- (2) In this section:

***authority of the Commonwealth*** means:

- (a) a Department of State, a Department of the Parliament, or a prescribed Agency within the meaning of the *Financial Management and Accountability Act 1997*; or
- (b) a Commonwealth authority within the meaning of the *Commonwealth Authorities and Companies Act 1997*; or
- (c) a Commonwealth company within the meaning of the *Commonwealth Authorities and Companies Act 1997*; or
- (d) any other body established for a public purpose by or under a law of the Commonwealth.

## **Part 6—Corporate planning and reporting by ACMA**

### **56 Corporate plans**

- (1) The ACMA must prepare a corporate plan at least once a year and give it to the Minister.
- (2) The plan must cover a period of at least 3 years.
- (3) The plan must include details of the following matters:
  - (a) the objectives of the ACMA;
  - (b) the strategies and policies that are to be followed by the ACMA in order to achieve those objectives;
  - (c) such other matters (if any) as the Minister requires.
- (4) The Chair must keep the Minister informed about:
  - (a) changes to the plan; and
  - (b) matters that might significantly affect the achievement of the objectives set out in the plan.
- (5) The Minister may give the Chair written guidelines that are to be used by the Chair in deciding whether a matter is covered by paragraph (3)(c) or (4)(b).

### **57 Annual report**

*Annual report to be given to Minister*

- (1) The ACMA must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report (an **annual report**) on the ACMA's operations during that financial year.

*What each annual report must include*

- (2) Each annual report must include:
  - (a) a copy of each direction given to the ACMA under section 14 during the financial year; and

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- (b) if:
  - (i) the ACMA gave an instrument to a carrier or to a carriage service provider under section 581 of the *Telecommunications Act 1997* during the financial year; and
  - (ii) in the ACMA's opinion, the instrument does not contain confidential information;a copy of the instrument; and
- (c) in relation to each instrument the ACMA gave as mentioned in subparagraph (b)(i) and that, in the ACMA's opinion, contains confidential information:
  - (i) if, in the ACMA's opinion, part of the instrument can be reproduced in the annual report without disclosing confidential information—a copy of that part; and
  - (ii) if subparagraph (i) does not apply—a statement specifying the instrument and the carrier or carriage service provider to which, and the day on which, it was given; and
  - (iii) a statement that, because of confidential information contained in the instrument, or in a part of it, as the case requires, the instrument or part is not reproduced in the annual report; and
  - (iv) a note summarising so much of the instrument as is not so reproduced, but without disclosing any information that, in the ACMA's opinion, is confidential; and
- (d) a report on:
  - (i) the number and types of complaints made under Part 26 of the *Telecommunications Act 1997* during the financial year; and
  - (ii) the investigations conducted under Part 26 of that Act during the financial year as a result of complaints made under Part 26 of that Act; and
  - (iii) the results of those investigations; and
- (e) a report on the operation of Part 6 of the *Telecommunications Act 1997* during the financial year; and
- (f) a report setting out statistical information relating to information or documents disclosed under Division 3 of



Part 13 of the *Telecommunications Act 1997*, where the disclosure:

- (i) occurred during the financial year; and
- (ii) is covered by a report given to the ACMA under section 308 of the *Telecommunications Act 1997*.

*Annual report to be tabled in Parliament*

- (3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

## **Part 7—Advisory committees and the Consumer Consultative Forum**

### **58 Advisory committees**

- (1) The ACMA may, by writing, establish advisory committees to assist it in performing any of its functions.
- (2) An advisory committee consists of such persons as the ACMA from time to time appoints to the committee.
- (3) The ACMA may revoke a person's appointment to an advisory committee.
- (4) The ACMA may give an advisory committee written directions as to:
  - (a) the way in which the committee is to carry out its functions; and
  - (b) procedures to be followed in relation to meetings.
- (5) An appointment to an advisory committee is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

### **59 Consumer Consultative Forum**

- (1) The Consumer Consultative Forum established under the *Australian Communications Authority Act 1997* continues in existence after the commencement of section 6 of this Act as if it were established by the ACMA, by writing, at that commencement.
- (2) The Forum's function is to assist the ACMA to perform the ACMA's functions in relation to matters affecting consumers.
- (3) The persons on the Forum are those the ACMA from time to time appoints to the Forum. The persons on the Forum immediately before the commencement of section 6 of this Act are taken to be appointed under this section at that commencement.
- (4) The ACMA may revoke a person's appointment to the Forum.

- (5) The ACMA may give the Forum written directions as to:
  - (a) the way in which the Forum is to carry out its function; and
  - (b) procedures to be followed in relation to meetings.
- (6) An appointment to the Forum is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

## Part 8—Other matters

### 60 Charges relating to ACMA's expenses

- (1) The ACMA may, by written instrument, make determinations fixing charges for:
- (a) services provided by the ACMA; and
  - (b) any matter in relation to which expenses are incurred by the ACMA under:
    - (i) this Act; or
    - (ii) the *Telecommunications Act 1997*; or
    - (iii) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
    - (iv) the *Radiocommunications Act 1992*; or
    - (v) the *Broadcasting Services Act 1992*; or
    - (vi) an instrument made under an Act referred to in subparagraph (ii), (iii), (iv) or (v);
- and specifying the persons by whom, and the times when, the charges are payable.
- (2) A charge fixed under subsection (1) must not be such as to amount to taxation.
- (3) For the purposes of recovering all or part of the ACMA's expenses relating to the performance of its functions under paragraph 11(1)(a) or (b), the ACMA may charge a person an amount that has been:
- (a) agreed with the person; or
  - (b) worked out under an agreement with the person.

Note 1: Paragraph 11(1)(a) is about the ACMA preparing to provide for the management of electronic addressing, and paragraph 11(1)(b) is about the ACMA providing for the management of electronic addressing.

Note 2: Subsection (3) lets the ACMA charge a consenting person for things done by the ACMA in performing those functions, even though the charge would be a tax if it were imposed on the person without his or her consent.

- (4) Subsection (3) does not limit subsection (1).

Note: The ACMA need not obtain a person's agreement to a charge that relates to the ACMA's expenses in performing its functions mentioned in subsection (3) and does not amount to taxation (either because the charge is a fee for the ACMA providing the person with services or facilities or for another reason).

- (5) This section does not apply to services or facilities provided under contract.

### **61 Charges are payable to the Commonwealth**

If section 60, or a provision of another Act, authorises the ACMA to fix a charge (however described), that charge is payable to the Commonwealth.

### **62 ACMA's expenses include related Commonwealth expenses**

A reference in section 60, or a provision of another Act, to an expense (however described) incurred by the ACMA in relation to a thing, includes a reference to an expense incurred by the Commonwealth in relation to the thing.

### **63 Chair not subject to direction by ACMA on certain matters**

The Chair is not subject to direction by the ACMA in relation to the Chair's performance of functions, or exercise of powers, under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*.

### **64 Definitions determination**

- (1) The ACMA may make a written determination defining 1 or more expressions used in specified instruments, being instruments that are made by the ACMA under 1 or more specified laws of the Commonwealth.
- (2) If the Minister is authorised to make an instrument under a law specified in a determination under subsection (1), the instrument may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, the

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provisions of a determination under subsection (1) as in force from time to time.

**65 Determinations may define expressions by reference to other instruments**

- (1) Without limiting the powers of the ACMA to make determinations under subsection 64(1), a determination under that subsection may define an expression used in a specified instrument by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing whatever:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time;even if the other instrument or writing does not yet exist when the determination is made.
- (2) A reference in subsection (1) to any other instrument or writing includes a reference to an instrument or writing:
  - (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory, an officer or authority of the Commonwealth or of a State or Territory or an overseas entity); and
  - (b) whether of a legislative, administrative or other official nature or of any other nature; and
  - (c) whether or not having any legal force or effect;for example:
  - (d) regulations or rules under an Act; or
  - (e) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or
  - (f) an international technical standard or performance indicator; or
  - (g) a written agreement or arrangement or an instrument or writing made unilaterally.
- (3) Nothing in this section limits the generality of anything else in it.
- (4) Subsection (1) has effect despite anything in the *Acts Interpretation Act 1901*.

**66 Person not to use protected name or protected symbol**

- (1) A person commits an offence if the person:
- (a) uses in relation to a business, trade, profession or occupation;  
or
  - (b) uses as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft (including aircraft); or
  - (c) applies, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let on hire;  
or
  - (d) uses in relation to:
    - (i) goods or services; or
    - (ii) the promotion, by any means, of the supply or use of goods or services;
- either:
- (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
  - (f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if the ACMA consents in writing to the use or application of the name or symbol.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Nothing in subsection (1), so far as it applies in relation to a protected name or in relation to a protected symbol, affects rights conferred by law on a person in relation to:
- (a) a trade mark that is registered under the *Trade Marks Act 1995*; or
  - (b) a design that is registered under the *Designs Act 2003*; and was registered under the *Trade Marks Act 1995* or the *Designs Act 1906* immediately before 11 May 2004 in relation to the name or symbol.

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- (4) Nothing in this section, so far as it applies to a protected name or in relation to a protected symbol, affects the use, or rights conferred by law relating to the use, of the name or symbol by a person in a particular manner if, immediately before 11 May 2004, the person:
- (a) was using the name or the symbol in good faith in that manner; or
  - (b) would have been entitled to prevent another person from passing off, by means of the use of the name or the symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.
- (5) Subsection (1) does not apply to a person who uses or applies a protected name or a protected symbol for the purpose of labelling customer equipment or customer cabling in accordance with section 407 of the *Telecommunications Act 1997* or section 182 of the *Radiocommunications Act 1992*.
- (6) The prosecution bears the evidential burden, and the legal burden, in relation to the matters in subsections (3), (4) and (5) (despite subsection 13.3(3) of the *Criminal Code*).
- (7) In this section:
- customer cabling* has the same meaning as in the *Telecommunications Act 1997*.
- customer equipment* has the same meaning as in the *Telecommunications Act 1997*.
- protected name* means:
- (a) “ACMA”; or
  - (b) “Australian Communications and Media Authority”.
- protected symbol* means an official symbol of the ACMA, the design of which is prescribed in the regulations.

**67 ACMA to maintain Register of policy notifications and Ministerial directions**

- (1) The ACMA is to maintain a Register in which the ACMA includes:



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- (a) all directions given to the ACMA under this Act or any other Act; and
  - (b) the contents, immediately before the commencement of section 6 of this Act, of the register maintained under section 56 of the *Australian Communications Authority Act 1997*.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 60:
- (a) inspect the Register; and
  - (b) make a copy of, or take extracts from, the Register.
- (4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACMA gives the person a printout of, or of the relevant parts of, the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACMA may provide the relevant information:
- (a) on a data processing device; or
  - (b) by way of electronic transmission.
- (6) In this section:

***data processing device*** means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

**68 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 2 December 2004  
Senate on 7 March 2005]*

(227/04)